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10/811,788	03/29/2004	Michael E. Rivir	12920/507125	9488

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FROST BROWN TODD LLC  
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EXAMINER
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THOMAS, DAVID B

ART UNIT	PAPER NUMBER
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3723

MAIL DATE	DELIVERY MODE
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09/15/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 15, 17 and 19 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 7 and 9 of prior U.S. Patent No. 6,726,549. This is a double patenting rejection. A "frame supporting said hopper, said hopper not being rigidly supported by said frame" constitutes the same subject matter as "at least one hopper support;...said hopper being carried by and mechanically isolated from said at least one hopper support" of the patented claims.

3. Claims 15, 17, and 19 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 5 and 7 of prior U.S. Patent No. 6,524,172. This is a double patenting rejection. A "frame supporting said hopper, said hopper not being rigidly supported by said frame" constitutes the same subject matter as "at least one hopper support;...said hopper being carried by and mechanically isolated from said at least one hopper support" of the patented claims.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

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and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 18 and 21-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,524,172 and claims 1-9 of U.S. Patent No. 6,726,549 in view of Abbott ('177).

Regarding claim 21, although the conflicting claims are not identical, they are not patentably distinct from each other because the claims provide an impulse assembly that is reciprocated between first and second positions, see claim 6 of the 6,524,172 patent and claim 8 of the 6,726,549 patent, thus, it would have been obvious that an impulse assembly which is carried by the hopper would be reciprocal between a first and a second position.

Regarding claim 18, Abbott teaches, *inter alia*, placing the vibrator 72 of a hopper 50 adjacent to the exit of the hopper, the vibrator may be a conventional device, a solenoid (which is inherently an impulse assembly), piezoelectric vibrators, and pneumatic vibrators (Col. 5, lines 1-21).

Regarding claim 22, if a solenoid is employed, per Abbott, it is known in the art of solenoids that solenoids have a member which reciprocates along a linear axis (claim 22), and regarding claim 23, it would have been obvious to one having ordinary skill in the art to discover the optimum orientation of the solenoid through routine experimentation with predictable results of facilitating the flow of particles through a hopper of a blast apparatus.

***Allowable Subject Matter***

6. Claims 25, 26, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: It is the examiner's opinion that the art of record considered as a whole, alone or in combination, neither anticipates nor renders obvious a particle blast apparatus having the combination of *an impulse assembly which is carried by the hopper and a vibrator*, together in combination with the rest of the limitations in the independent claim.

***Terminal Disclaimer***

8. The terminal disclaimer does not comply with 37 CFR 1.32(c)(3) because: **more than 10 practitioners are listed**. Except as provided in paragraph (c)(1) or (c)(2) of this section, the Office will not recognize more than ten patent practitioners as being of record in an application or patent. If a power of attorney names more than ten patent practitioners, such power of attorney must be accompanied by a separate paper

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indicating which ten patent practitioners named in the power of attorney are to be recognized by the Office as being of record in the application or patent to which the power of attorney is directed. **A newly executed power of attorney is thus required.**

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Thomas whose telephone number is (571) 272-4497. The examiner's e-mail address is: [dave.thomas@uspto.gov](mailto:dave.thomas@uspto.gov). The examiner can normally be reached on Mon-Fri 10am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David B. Thomas/  
Primary Examiner, Art Unit 3723

/DBT/